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AUG 14 1996

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

In re Applications of)

RAINBOW BROADCASTING COMPANY)

For an extension of time)
to construct)

and)

For an Assignment of its)
construction permit for)
Station WRBW(TV), Orlando, Florida)

TO: The Honorable Joseph Chachkin
Administrative Law Judge

GC Docket No. 95-172
File No. BMPCT-910625KP
File No. BMPCT-910125KE
File No. BTCCT-911129KT

PRESS BROADCASTING COMPANY, INC.
HEARING EXHIBIT

NO. 21

Transcript of Deposition
of Clay Pendarvis
conducted May 23, 1996

<u>Federal Communications Commission</u>	
Docket No. <u>GC-95-172</u> Exhibit No. <u>21</u>	
Presented by <u>Harry Cole, Esq. / Press Broadcasting</u>	
Disposition	Identified <u>X</u>
	Received <u>X</u>
	Rejected <u> </u>
Reporter <u>Patterson, Perry</u>	
Date <u>7/11/96</u>	

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4BEFORE THE FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C.

AUG 14 1996
FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

-----X
: IN RE: Applications of : GC Docket No.
Rainbow Broadcasting Company : 95-172
for an extension of time to : File Nos.
construct and for an assignment : BMPCT-910625KP
of its construction permit for : BMPCT-910125KE
Station WRBW (TV), Orlando, : BTCCT-911129KT
Florida. :
:
-----X

Washington, D.C.

Thursday, May 23, 1996

Deposition of

CLAY PENDARVIS

a witness of lawful age, taken on behalf of
Press Broadcasting Company, Inc., in the
above-entitled action, before Thomas R.
Brezina, notary public in and for the District
of Columbia, in the offices of the Federal
Communications Commission, 1919 M Street,
Washington, D.C., commencing at 10:29 a.m.,
when were present on behalf of the following
parties:

BETA

A Full Service Reporting Company
There is No Substitute for Quality

(703) 684-BETA

1 APPEARANCES:

2 On behalf of Rainbow Broadcasting Company, Inc.:

3 ALLAN G. MOSKOWITZ, ESQUIRE
4 BRUCE A. EISEN, ESQUIRE
5 Kaye, Scholer, Fierman, Hays & Handler
6 901 15th Street, N.W., Suite 1100
7 Washington, D.C. 20005
8 (202) 682-3500

7 On behalf of Rainbow Broadcasting, Ltd.:

8 MARGOT POLIVY, ESQUIRE
9 Renouf & Polivy
10 1532 16th Street, N.W.
11 Washington, D.C. 20036
12 (202) 265-1807

11 On behalf of Press Broadcasting Company, Inc.:

12 HARRY F. COLE, ESQUIRE
13 Bechtel & Cole, Chartered
14 1901 L Street, N.W., Suite 250
15 Washington, D.C. 20036
16 (202) 833-4190

16 On behalf of FCC:

17 STEWART A. BLOCK, ESQUIRE
18 DAVID SILBERMAN, ESQUIRE
19 Federal Communications Commission
20 Office of General Counsel
21 1919 M Street, N.W., Suite 602
22 Washington, D.C. 20554
(202) 418-1740

On behalf of Witness:

CHARLES DZIEDZIC, ESQUIRE
Federal Communications Commission
1919 M Street, N.W., Room 712
Washington, D.C. 20554
(202) 418-1604

ALSO PRESENT:

Mr. Joseph Rey

* * * * *

C O N T E N T S

EXAMINATION BY:	PAGE
Counel for Press Broadcasting	4
Counsel for Rainbow Broadcasting, Ltd.	19

* * * * *

P R O C E E D I N G S

Whereupon,

CLAY PENDARVIS

was called as a witness and, having been first
duly sworn, was examined and testified as
follows:

EXAMINATION BY COUNSEL FOR PRESS

BROADCASTING

BY MR. COLE:

Q Good morning, Mr. Pendarvis.

Could you state your name and office
address for the record, please.

A My name is Clay Pendarvis. I'm chief
of the television branch, Federal
Communications Commission, 1919 M Street,
Northwest, Washington, D.C. 20554.

Q Mr. Pendarvis, we appreciate your
coming down. We'll try to make this as quick
as possible, because we don't want to intrude
on your busy schedule.

I'm Harry Cole, counsel for Press
Broadcasting Company in this case. In the

1 event that you have any questions about the
2 questions which are presented to you, you don't
3 understand them or you want clarification,
4 please don't hesitate to ask. We'll do
5 everything we can to make it as clear as we
6 can, and we do appreciate your cooperation.

7 How long have you been chief of the
8 TV branch?

9 A For about 15 years.

10 Q And how long have you been at the
11 FCC?

12 A Twenty-two years.

13 Q And is it correct that you are an
14 attorney by training?

15 A That's correct.

16 Q Sir, the hearing, in connection with
17 which we are conducting this deposition,
18 includes in its caption, three applications
19 filed by Rainbow Broadcasting Company, and I'll
20 use the term, the shorthand RBC for Rainbow
21 Broadcasting Company. Those applications
22 include two applications for extension of RBC's

1 construction permit for Channel 65 in Orlando,
2 Florida, and one application for consent to the
3 assignment of that permit.

4 Are you generally familiar with those
5 applications?

6 A Yes.

7 Q During the period of time, January
8 1991 through July of 1993, did you have any
9 oral communications with anyone acting on
10 behalf of RBC, with respect to any RBC
11 application, which was pending before the
12 bureau at the time of the communication?

13 A Yes.

14 Q How many such communications did you
15 have?

16 A My recollection is two, I think.

17 Q Sir, let me show you, in the course
18 of discovery in this case, RBC has produced for
19 Press a document which I'm providing to you,
20 and which was previously this morning
21 identified as Kreisman Deposition Exhibit No.
22 1, which was provided in response to a request

1 for copies of records of a law firm of Renouf &
2 Polivy, reflecting contacts between
3 representatives of that firm and members of the
4 Commission staff, in connection with the RBC
5 applications.

6 If you could take a minute, sir, and
7 just review that, and see if that refreshes
8 your recollection at all, with respect to any
9 communications you might have had with RBC, or
10 its representatives.

11 A My recollection is still
12 approximately two contacts.

13 Q And let's take the first of those two
14 contacts.

15 When did that occur? Do you recall?

16 A I think it was sometime after the
17 first Rainbow decision.

18 Q The first Rainbow decision, are you
19 referring there, to the letter from Barbara
20 Kreisman, dated June 18, 1993, denying or
21 dismissing Rainbow's then-pending applications?

22 A That's correct.

1 Q So, there was a conversation after
2 that, at some point?

3 A That's correct.

4 Q And who was that conversation with?

5 A There were two conversations. One
6 was Toni Cook Bush, and the other one was with
7 Mrs. Margot Polivy.

8 Q Okay. Which one of those came first?

9 A I think the Toni Cook Bush
10 conversation took place first.

11 Q Okay. Let's focus on that one just
12 for right now.

13 Ms. Bush spoke with you. That was by
14 telephone or in person?

15 A By telephone.

16 Q Who made that call? Who placed the
17 call? Was that you or her?

18 A I placed the call.

19 Q How did you have occasion to place
20 the call?

21 A She called Roy Stewart, chief of the
22 mass media bureau, and he directed me to call

1 her. Or asked me to call her.

2 Q How long was your conversation with
3 Ms. Cook Bush, to the best of your
4 recollection?

5 A Maybe five minutes.

6 Q At any time during your conversation
7 with Ms. Bush, did she say anything to you
8 about the Commission's ex parte rules?

9 A No.

10 Q At any time during your conversation
11 with Ms. Bush, did she say anything about the
12 applicability of the ex parte rules to your
13 conversation with her?

14 A No.

15 Q At any time during your conversation
16 with Ms. Bush, did she say anything which you
17 understood to relate, in any way, to the
18 Commission's ex parte rules, or to the
19 applicability of those rules, to the
20 communication you were having with her?

21 A No.

22 Q At any time during your conversation

1 with Ms. Bush, did you say anything to her
2 about the Commission's ex parte rules?

3 A No.

4 Q At any time during your communication
5 with Ms. Bush, did you say anything to her
6 about the applicability of the ex parte rules
7 to your conversation with her?

8 A No.

9 Q Okay.

10 Let's move on to the second
11 conversation, which I believe you said was with
12 Ms. Polivy; is that correct?

13 A That's correct.

14 Q Do you recall when that occurred?

15 A I don't recall the exact date, but it
16 was after the Toni Bush call was -- as best I
17 can recall.

18 Q Do you also recall a meeting that was
19 held in Mr. Stewart's office on July 1, 1993?

20 A Yes.

21 Q Was your conversation with Ms. Polivy
22 before, or after that meeting?

1 A Before that meeting.

2 Q Did Ms. Polivy call you, or did you
3 call her?

4 A She called me.

5 Q And how long did that conversation
6 last, approximately?

7 A I'd say less than a minute.

8 Q During that conversation, did Ms.
9 Polivy say anything to you about the
10 Commission's ex parte rules?

11 A No.

12 Q During that conversation, did Ms.
13 Polivy say anything to you about the
14 applicability of the ex parte rules, to your
15 conversation with her?

16 A No.

17 Q During your conversation with Ms.
18 Polivy, did she say anything, which you
19 understood to relate, in any way, to the
20 Commission's ex parte rules, or to the
21 applicability of those rules, to the
22 conversation that you were having with Ms.

1 Polivy?

2 A No.

3 Q At any time during your conversation
4 with Ms. Polivy, did you say anything to her
5 concerning the Commission's ex parte rules?

6 A No.

7 Q And at any time during your
8 conversation with Ms. Polivy, did you say
9 anything to her about the applicability of the
10 ex parte rules to your conversation?

11 A No.

12 Q Were those the only two telephone
13 conversations that you had with any RBC
14 representative, concerning RBC's applications,
15 to the best of your recollection?

16 A To the best of my recollection, those
17 were the only two.

18 Q Okay.

19 But you did participate, did you not,
20 in the July 1 meeting? You were in attendance.

21 A I was in attendance, that's correct.

22 Q That meeting was held in Mr.

1 Stewart's office. Is that what you said?

2 A That's correct.

3 Q Did you communicate with anyone, on
4 behalf of RBC, to make arrangements to hold
5 that meeting?

6 A No. Ms. -- Ms. Polivy called me
7 about -- about a meeting. That was the nature
8 of my conversation with her.

9 Q I see.

10 A And I -- my recollection is, I told
11 her I'd get back to her. And I think I
12 received a call from her partner saying the
13 meeting had been scheduled, and was in Mr.
14 Stewart's office. And that's the extent of any
15 conversations I had about scheduling a meeting.

16 Q When you say that you spoke with Ms.
17 Polivy, is that the conversation you and I were
18 just discussing beforehand? Was there a --

19 A No. That was another -- I think I
20 got a call back from her office, not from her,
21 but I think it was from her law partner,
22 indicating --

1 Q Ms. Renouf?

2 A The meeting that she had called me
3 about earlier was scheduled to be in Roy
4 Stewart's office and requested that I attend.

5 Q So, just so the record is straight,
6 you had one conversation with Ms. Cook Bush and
7 just one conversation with Ms. Polivy.

8 A That's correct.

9 Q And then one conversation, of a
10 follow-up nature, with Ms. Polivy's colleague.

11 A I think I received a call from her
12 office, and I think it was her law partner,
13 yes.

14 Q How long was the conversation with
15 her law partner, or this --

16 A It was just less than a minute,
17 probably. I think the nature of it was --
18 there was a meeting scheduled in Roy Stewart's
19 office, and would I attend, or was -- asked me
20 to attend.

21 Q Did that person, to the best of your
22 recollection, say anything about the

1 Commission's ex parte rules during that
2 conversation?

3 A No.

4 Q Did that person say anything about
5 the applicability of the ex parte rules, either
6 to your conversation that you were having, or
7 to the meeting that was discussed in the
8 conversation?

9 A No.

10 Q Did that person say anything, which
11 you understood to relate to the Commission's ex
12 parte rules, or to the applicability of those
13 ex parte rules to the communication, or to the
14 meeting which was proposed during the
15 conversation?

16 A No.

17 Q At any time during that conversation
18 did you say anything, to whoever that person
19 was, about the ex parte rules?

20 A No.

21 Q And at any time during that
22 conversation, did you say anything to that

1 person about the applicability of the ex parte
2 rules to the communication that you were
3 having? Or to the --

4 A No.

5 Q -- to the meeting that was proposed
6 in that communication?

7 A No.

8 Q Now, let's go to the July 1 meeting.

9 Who was in attendance, on behalf of
10 RBC at that meeting? If you recall?

11 A Ms. Polivy and a principal from
12 Rainbow. I don't recall his name.

13 Q At any time during the meeting, did
14 Ms. Polivy, or the RBC principal who was with
15 her, say anything about the Commission's ex
16 parte rules?

17 A No.

18 Q At any time during the meeting, did
19 Ms. Polivy, or the principal who was with her,
20 say anything about the applicability of the ex
21 parte rules to the communications, which were
22 taking place in the meeting?

1 A No.

2 Q At any time during the meeting, did
3 Ms. Polivy, or the principal who was with her,
4 say anything which you understood to relate, in
5 any way, to the Commission's ex parte rules, or
6 the applicability of the those rules, to the
7 communications which were taking place at the
8 meeting?

9 A No.

10 Q At any time during the meeting, did
11 you say anything to Ms. Polivy, or to the RBC
12 principal with her, about the Commission's ex
13 parte rules?

14 A No.

15 Q At any time during the meeting, did
16 you say anything to Ms. Polivy, or the
17 principal who was with her, about the
18 applicability of the ex parte rules to the
19 communications, which were taking place at the
20 meeting?

21 A No.

22 Q Were there any other communications,

1 besides those that we've discussed this
2 morning, between you and any representative of
3 RBC, concerning the RBC applications?

4 A None that I recall.

5 Q Is it accurate to state, Mr.
6 Pendarvis, that at no time in any oral
7 communications between you and anyone acting on
8 behalf of RBC, did either you or that person,
9 or persons with whom you were communicating,
10 say anything about the ex parte rules. Is that
11 accurate?

12 A That's accurate.

13 Q Is it also accurate to state, that at
14 no time in any oral communication between you
15 and anyone acting on behalf of RBC, did either
16 you or that person, or persons, say anything
17 about the applicability of the ex parte rules
18 to the communication which was taking place?

19 A That's accurate.

20 Q Is it accurate to state, that at no
21 time in any oral communication between you and
22 anyone acting on behalf of RBC, did the person

1 or persons with whom you were communicating,
2 say anything which you understood to relate in
3 any way, to the ex parte rules, or to the
4 applicability of the ex parte rules to the
5 communication which was taking place?

6 A That's accurate.

7 MR. COLE: I have no further
8 questions.

9 EXAMINATION BY COUNSEL FOR RBL

10 BY MS. POLIVY:

11 Q Good morning, Mr. Pendarvis.

12 A Good morning.

13 Q I just have a few.

14 The telephone calls with Rainbow, or
15 with me representing Rainbow, that you have
16 testified to, with respect to Mr. Cole's
17 questions, was there anything of substance
18 regarding the Rainbow applications discussed
19 during those telephone calls?

20 A The merits?

21 MR. DZIEDZIC: Objection.

22 BY MS. POLIVY:

1 Q I mean the merits, yes.

2 MS. POLIVY: I take it that was your
3 objection?

4 MR. DZIEDZIC: That's correct.

5 BY MS. POLIVY:

6 Q Yes. I do mean the merits.

7 MR. DZIEDZIC: You can answer.

8 THE WITNESS: No.

9 BY MS. POLIVY:

10 Q Okay.

11 At the meeting of July 1, that you
12 attended, do you recall any mention,
13 whatsoever, of ex parte?

14 MR. BLOCK: Objection. Asked and
15 answered.

16 THE WITNESS: No.

17 MR. DZIEDZIC: He can answer. He's
18 answered.

19 BY MS. POLIVY:

20 Q No?

21 A No. I don't recall any.

22 MS. POLIVY: I have no further

1 questions.

2 MR. MOSKOWITZ: Mr. Pendarvis, I'm
3 Allan Moskowitz. I have no questions.

4 MS. POLIVY: He just wanted to get
5 his name on the record.

6 MR. COLE: Needs it for billing
7 purposes.

8 MR. BLOCK: I'm Stuart Block. With
9 me is David Silberman of the separate trial in
10 this matter, and I think all the appropriate
11 questions have been asked, so I won't ask
12 anything else. Thank you.

13 THE WITNESS: Okay.

14 MR. COLE: Thank you, Mr. Pendarvis.
15 I appreciate your cooperation.

16 (Discussion off the record)

17 MR. DZIEDZIC: I just wanted to
18 state, for the record, that Ms. Kreisman and
19 Messrs. Stewart and Pendarvis appeared here
20 today without the necessity of a subpoena.

21 MS. POLIVY: At the direction of the
22 Commission.

1 MR. DZIEDZIC: No. It was authorized
2 by the Commission. Only the judge can issue a
3 subpoena.

4 MR. MOSKOWITZ: That's it.

5 MR. DZIEDZIC: That's it.

6 (Whereupon, at 10:45 a.m., the
7 deposition of CLAY PENDARVIS was
8 adjourned.)

9 * * * * *

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